

The 10 Criteria

The underlying purpose of any land use regulation is to protect valuable resources and services for the use and enjoyment of current and future generations. In the case of Act 250, these resources are protected through the use of 10 essential criteria that an applicant must meet in order to receive a permit to pursue a project.

How important are the resources protected by these criteria? When we consider how many people live in Vermont, visit the state, or decide to move here because of Vermont's unspoiled environment, it is clear that the protection of Vermont's natural resources and services guarantees the continued stability of our quality of life. When we consider how many businesses are dependent upon the continued availability of Vermont's natural resources and the integrity of the "Made in Vermont" label, it is also clear that this same protection guarantees the continued and responsible growth of our economy.

This section of the report provides an overview of the 10 Criteria and how they protect important natural resources, governmental services, and other issues of public interest.

Criterion 1 Water and Air

Criterion 1 addresses issues concerning air and water quality. Water and air pollution, public access, wetlands, floodplains, and the protection of streams, rivers and shorelines are some of the concerns covered in these criteria.

The benefits of protections guaranteed under these criteria should be readily apparent. Visitors and residents alike are drawn to Vermont by clean air and pristine water. We all expect clean water supplies without the worry of contamination. Unspoiled streams, rivers, lakes, and wetlands are part of the state's natural heritage.

Criterion 1 Air Pollution

This subcriterion requires the District Commission to find that the project will not result in undue air pollution resulting from an industrial process or other point sources of air emissions. Non-point sources, such as automobile traffic are also considered, in cases where a proposed commercial project may generate a large volume of traffic.

While they may not be as obvious, other forms of air pollution such as dust, noise and odor, are also covered under this subcriterion. Depending on the proximity of the project to residential areas and other population centers these issues can be critical to the overall impact of a project.

Criterion 1(A) Headwaters

Particularly sensitive water sources, such as high elevation water supplies, small drainage basins, watersheds of public water supplies, and aquifer recharge areas are protected by Subcriterion 1(A). An applicant must demonstrate that a proposed development or subdivision will not reduce the quality of surface and ground water flowing through these areas.

Criterion 1(B) Waste Disposal

Subcriterion 1(B) specifies that a development or subdivision "will not result in the injection of waste materials or harmful or toxic substances into groundwater or wells." Under this subcriterion, a District Commission reviews an applicant's wastewater disposal plans to ensure that soils are adequate for on-site sewage disposal or that adequate reserve capacity exists in the nearby municipal treatment plant. The applicant must also prove that stormwater runoff from a newly developed site will not cause pollution or sedimentation of nearby streams.

Criterion 1(C) Water Conservation

Although we seem to have an abundance of water in the state, most Vermonters recognize the need to conserve water. Water conserving plumbing fixtures and other conservation methods have become increasingly important as new demands are made on existing water supplies. Subcriterion 1(C) requires that new development projects utilize the best available technology for water conservation.

Criterion 1(D) Floodways

If a project is to be located in a floodway or floodway fringe, Subcriterion 1(D) requires that the project will not restrict or divert the flow of flood waters and thereby endanger the health, safety, and welfare of the public or of riparian owners during flooding. In addition, a new development must not significantly increase the peak discharge of the river or stream within or downstream from the area to be developed.

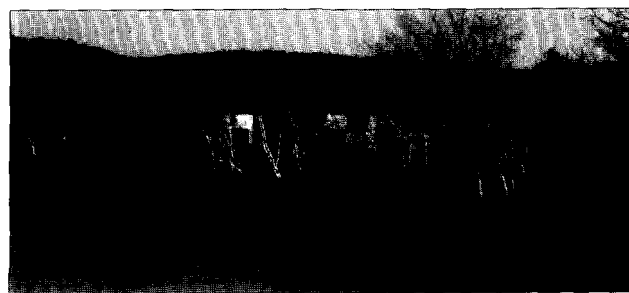
Criterion 1(E) Streams

Under Act 250's Criterion 1(E), projects proposed near streams must maintain the "natural condition" of the stream to the greatest extent possible and the applicant must demonstrate that the health, safety and welfare of adjoining landowners or the public will not be endangered.



To maintain the "natural condition" of a stream, erosion must be controlled, the stream banks must be maintained, and the quality of its water must not be degraded. The best way to ensure this is to design the project in concert with the natural location of the stream and thereby avoid any potential impact. This is often accomplished by providing an adequate buffer zone between the project and the stream. When stream impacts cannot be avoided, adequate mitigation must be provided to protect the integrity of the stream.

Criterion 1(F) Shorelines



Criterion 1(F) requires that an applicant proposing a project along a shoreline of a lake, pond, or river must demonstrate that it is necessary for the project to be located on a shoreline in order to fulfill its purpose. In addition, the applicant must prove that, to the greatest extent feasible, the "natural condition" of the shoreline will be maintained. It may be necessary to plant additional vegetation in order to shield the project from the lake, pond, or river and to stabilize the bank from erosion.

Finally, a project must not diminish existing public access to public waters. This helps insure the continued enjoyment of existing recreational activities supplied by the shoreline and the adjacent waters for Vermonters and visitors alike.

Criterion 1(G) Wetlands

Wetlands serve many important functions such as filtering pollutants, reducing erosion, recharging aquifers, reducing flooding and providing necessary habitat and breeding grounds for wildlife. In addition, these areas are important for their recreational and educational values.



Under this subcriterion, proposed projects must not violate the rules of the Water Resources Board protecting "significant" wetlands.

What attributes make a wetland "significant"? A wetland's significance is based on its role in providing the important functions mentioned above. For example, a wetland can be significant for groundwater protection if it recharges a well head or aquifer. A wetland is significant for wildlife if it provides breeding, nursing, or feeding grounds, or habitat to fish and other wildlife. This may also include endangered or threatened plants and animals.

If a project involves a significant wetland, the next step is to decide whether the project's use of the wetland will be "allowed" or "conditional" (allowed and conditional uses are fully listed in the Vermont Wetland Rules). Allowed uses are those that do not involve draining, dredging, filling, or altering the flow of water in or out of the wetland and include educational use, wildlife or fisheries management, and recreational uses. A project that involves an allowed use can begin using the wetland for that purpose without any review.

However, those projects that involve some disturbance to the wetland or required buffer zone must obtain a "conditional use determination" (CUD) from the Wetlands Office of the Vermont Agency of Natural Resources prior to proceeding with a project. In order to obtain a CUD an applicant must prove that the project will not have an adverse effect on the wetland. In certain situations, off-site mitigation may be required to compensate for wetland impacts associated with a development project.

If a wetland is not found to be "significant" under the Wetland Rules, it still may be protected under other Act 250 criteria involving waste disposal, erosion control, flooding, shorelines, or wildlife habitat.

Criterion 2 Water Supply

Under Criterion 2 an applicant must demonstrate that there is sufficient water available for the reasonably foreseeable needs of the proposed subdivision or development. The water may come from a private source, such as a spring or well, or it may come from a public source such as a municipal water system. In either case, by assuring adequate water supplies for a project, this criterion protects public health and prevents costly water shortages in the future.

If the District Commission or the Board finds that the project presents an adverse impact in a visually sensitive area, then the next step is to determine if any of the following are true: 1) Will the project violate any clear, written community standard?

2) Would the average person find the project shocking or offensive? 3) Has the applicant failed to take reasonable steps to lessen adverse effects? If the answer is yes to any of the above questions, then the project will be considered "unduly adverse" and must be denied. However, it is rare for a project to be denied for purely aesthetic reasons. Often, the design of an adverse project is altered in order to comply with Criterion 8. The quality of design is very high in Vermont because of Act 250's aesthetic review.

Historic Sites



Historic sites are also protected under Criterion 8. A development must not have an undue adverse effect on a site which is listed on the state or national register of historic places or is determined to be historically significant by the Vermont Advisory Council on Historic Preservation. These areas are an important part of Vermont's cultural heritage. Careful planning and early coordination with the Vermont Division for Historic Preservation are keys to satisfying this aspect of Criterion 8 and ensuring a successful development or subdivision.

Criterion 8(A) Necessary Wildlife Habitat and Endangered Species

Criterion 8(A) protects necessary wildlife habitat and endangered species. This protection has important economic as well as ecological consequences. It is the one area of Act 250 review where some economic balancing is required. If a development or subdivision "will destroy or significantly imperil" necessary wildlife habitat or endangered species, a District Commission is required to weigh the economic, social, cultural or recreational benefit to be derived from the development versus the economic, environmental or recreational benefit derived from the habitat or species. Another important consideration is whether all "feasible and reasonable means of preventing or lessening ... the destruction or imperilment" will be implemented. In most cases, projects can be designed or redesigned to avoid undue adverse impacts on important resources.

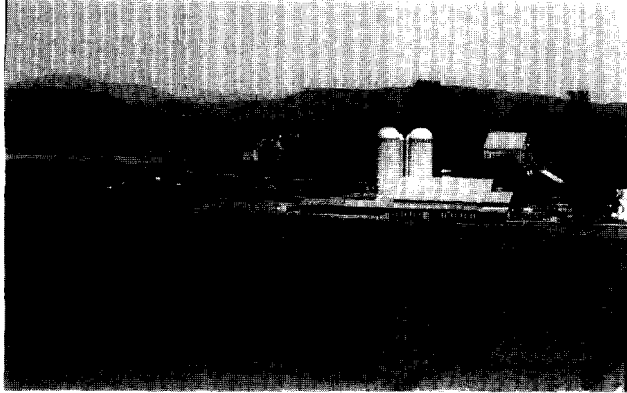
Criterion 9 Conformance with Capability and Development Plan

Criterion 9 covers a number of important issues related to public and private infrastructure, natural resource areas, and planning for orderly growth.

Criterion 9(A) Impact of Growth

Subcriterion 9(A) requires that an applicant demonstrate that a development or subdivision will not significantly affect the financial capacity of a town or region to accommodate growth resulting from the proposed project in addition to the growth already anticipated by the town or region. This is not normally an issue for small residential or commercial projects, which fit within the historical growth rate of towns. Large projects, however, must be carefully reviewed to determine if they will cause an undue burden on the town or region's ability to provide services such as education, fire, police, and sewage disposal.

Criteria 9(B) and 9(C) Primary Agricultural Soils and Forest Soils



Twenty-seven percent of the land in Vermont is used for agriculture or forestry. The protection of these soils is of obvious economic importance; however, that protection also provides important aesthetic, ecological, and land use benefits. Individuals may still develop their properties in a manner which will not dramatically reduce the agricultural or forestry potential of the soils. In certain situations, offsite mitigation may be beneficial to the protection of the resource from a town, regional, or statewide perspective.

Criteria 9(D) and 9(E) Earth Resources

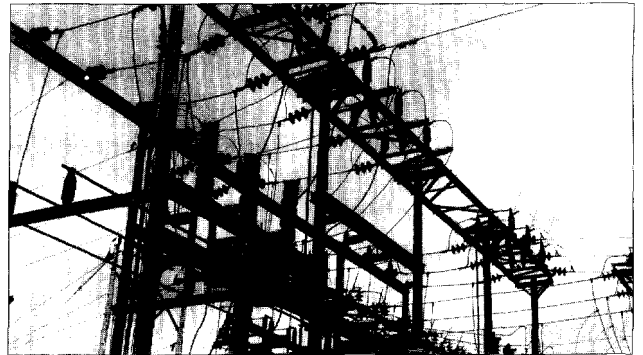
Subcriterion 9(D) protects lands with high potential for future resource extraction. Subcriterion 9(E) covers the actual impacts of a resource extraction project and requires planning for future rehabilitation of the site.



As with other Act 250 criteria, the concern here is twofold: economic and environmental. Destroying the extraction potential of an area through development would be short-sighted and economically unsound. At the same time, extracting earth resources without consideration for water quality, visual impacts, or future alternate uses of the area would be both environmentally and economically unsound.

In addition to these objective considerations, applicants must address issues such as noise, dust, and visual intrusions affecting adjoining property owners and nearby residents.

Criteria 9(F) and 9(J) Energy and Utilities



Energy conservation is of importance not only in Vermont, but throughout the world. The costs of energy, the depletion of energy resources, and concerns over pollution and remediation are world-wide.

Under Criterion 9(F) of Act 250, projects and developments in Vermont are required to use the best available technology for the efficient use or recovery of energy based on reasonable estimates of life cycle cost to the ultimate consumer. This is just good sense; it helps keep costs down and conserves our resources for future generations.

Similarly under Criterion 9(J), projects must not place an unreasonable burden on public utilities. This helps assure the availability of our energy resources for today and promotes sound energy planning for the future.

**Criterion 9(G)
Private Utility Services**

When a subdivision or development relies on privately-owned utility services, such as wastewater facilities or roads, an applicant must demonstrate that adequate legal and financial mechanisms are in place to protect the municipality in the event that the municipality is required to assume responsibility for the utilities. If private utilities are involved, a District Commission may condition the land use permit to require that the applicant maintain, repair and replace the utilities as approved.

**Criterion 9(H)
Costs of Scattered Development**

Subcriterion 9(H) states that "[the] district commission or board will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenues and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers."

**Criterion 9(K)
Development Affecting Public Investments**

Under this subcriterion, a District Commission must find that a proposed project will not unnecessarily or unreasonably endanger the public or quasi-public investment in public investments located adjacent to the project, such as highways, airports, waste disposal facilities, schools, parks, and forest and game lands. This includes providing continued public access to any affected public investment. For instance, a development project located next to a public park must not interfere with the public's use or enjoyment of the park.

**Criterion 9(L)
Rural Growth Areas**

Subcriterion 9(L) addresses the need for the careful planning of subdivisions and developments located in rural growth areas in order to "economize on the cost of roads, utilities, and land usage." This is one of several criteria in the law which is intended to protect municipalities from undue financial burdens caused by new development while conserving land.

**Criterion 10
Local and Regional Plans**

Criterion 10 requires that a proposed project be in conformance with duly adopted local and regional plans. If towns and regions of the state are to grow in an orderly way it is essential that new development follow the provisions of local and regional plans, which are adopted after much thought and debate by citizens who care about their town and region. Plans are updated every five years to reflect recent changes in population, land use, and public infrastructure. The provisions of Criterion 10 ensure that new development projects reflect the wishes of local citizens about the future of their town and region.



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This report is an outgrowth of a 10 week internship with the Environmental Board by
Theresa Gallant, a student at Green Mountain College.

The internship was sponsored by the Vermont Environmental Internship Program,
a pilot project of the New England Board of Higher Education.

Funding for this report was provided by The Brattle Fund of The Vermont Community Foundation.

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ACT 250

Vermont's

Land Use and Development Law

Title 10, Chapter 151

Including all Legislative Amendments

Effective July 1, 1997

(September 1997)

PART 5. LAND USE AND DEVELOPMENT

Chapter 151. State Land Use and Development Plans

Findings and Declaration of Intent

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- 6005. *[Repealed.]*
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FINDINGS AND DECLARATION OF INTENT

Whereas, the unplanned, uncoordinated and uncontrolled use of the lands and the environment of the state of Vermont has resulted in usages of the lands and the environment which may be destructive to the environment and which are not suitable to the demands and needs of the people of the state of Vermont; and

Whereas, a comprehensive state capability and development plan and land use plan are necessary to provide guidelines for utilization of the lands and environment of the state of Vermont and to define the goals to be achieved through land environmental use, planning and control; and

Whereas, it is necessary to establish an environmental board and district environmental commissions and vest them with the authority to regulate the use of the lands and the environment of the state according to the guidelines and goals set forth in the state comprehensive capability and development plan and to give these commissions the authority to enforce the regulations and controls; and

Whereas, it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly

detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state;

Now, therefore, the legislature declares that in order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests, the state shall, in the interest of the public health, safety and welfare, exercise its power by creating a state environmental board and district environmental commissions conferring upon them the power to regulate the use of lands and to establish comprehensive state capability, development and land use plans as hereinafter provided. --1969, No. 250 (Adj. Sess.), § 1, eff. April 4, 1970.

Subchapter 1. General Provisions

§ 6001. Definitions

When used in this chapter:

- (1) "Board" means the environmental board.
- (2) "Capability and development plan" means the plan prepared pursuant to section 6042 of this title.
- (3) "Development" means the construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes. "Development" shall also mean the construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws. "Development" shall also mean the construction of improvements for commercial or industrial purposes on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a municipality that has adopted permanent zoning and subdivision bylaws, if the municipality in which the proposed project is located has elected by ordinance, adopted under chapter 59 of Title 24, to have this jurisdiction apply. The word "development" shall mean the construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or trailer parks, with 10 or more units,

constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land, and within a continuous period of five years. The word "development" shall not include construction for farming, logging or forestry purposes below the elevation of 2500 feet. The word "development" also means the construction of improvements on a tract of land involving more than 10 acres which is to be used for municipal, county or state purposes. In computing the amount of land involved, land shall be included which is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings. In the case of a project undertaken by a railroad, no portion of a railroad line or railroad right-of-way that will not be physically altered as part of the project shall be included in computing the amount of land involved. In the case of a project undertaken by a person to construct a rail line or rail siding to connect to a railroad's line or right-of-way, only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved. The word "development" shall not include an electric generation or transmission facility which requires a certificate of public good under section 248 of Title 30 or a natural gas facility as defined by subdivision 248(a)(3) of that title. The word "development" shall also mean the construction of improvements for commercial, industrial or residential use above the elevation of 2500 feet. The word "development" shall also mean exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material. The word "development" shall also mean the drilling of an oil and gas well. --Amended 1993, No. 200 (Adj. Sess.), § 1, eff. June 17, 1994, amended 1997, No. 48, § 1, eff. July 1, 1997.

(4) "District commission" means the district environmental commission.

(5) "Endangered species" means those species the taking of which is prohibited under rules adopted under chapter 123 of this title.

(6) "Floodway" means the channel of a watercourse which is

expected to flood on an average of at least once every 100 years and the adjacent land areas which are required to carry and discharge the flood of the watercourse, as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.

(7) "Floodway fringe" means an area which is outside a floodway and is flooded with an average frequency of once or more in each 100 years as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.

(8) "Forest and secondary agricultural soils" means soils which are not primary agricultural soils but which have reasonable potential for commercial forestry or commercial agriculture, and which have not yet been developed. In order to qualify as forest or secondary agricultural soils the land containing such soils shall be characterized by location, natural conditions and ownership patterns capable of supporting or contributing to present or potential commercial forestry or commercial agriculture. If a tract of land includes other than forest or secondary agricultural soils only the forest or secondary agricultural soils shall be affected by criteria relating specifically to such soils.

(9) "Historic site" means any site, structure, district or archeological landmark which has been officially included in the National Register of Historic Places and/or the state register of historic places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant.

(10) "Land use plan" means the plan prepared pursuant to section 6043 of this title.

(11) "Lot" means any undivided interest in land, whether freehold or leasehold, including but not limited to interests created by trusts, partnerships, corporations, cotenancies and contracts.

(12) "Necessary wildlife habitat" means concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods.

(13) "Plat" means a map or chart of a subdivision with surveyed lot lines and dimensions.

(14)(A) "Person":

(i) shall mean an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership;

(ii) means a municipality or state agency;

(iii) includes individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the partition or division of land;

(iv) includes an individual's parents and children, natural and adoptive, and spouse, unless the individual establishes that he or she will derive no profit or consideration, or acquire any other beneficial interest from the partition or division of land by the parent, child or spouse;

(B) The following individuals and entities shall be presumed not to be affiliated for the purpose of profit, consideration, or other beneficial interest within the meaning of this chapter, unless there is substantial evidence of an intent to evade the purposes of this chapter:

(i) a stockholder in a corporation shall be presumed not to be affiliated with others, solely on the basis of being a stockholder, if the stockholder and the stockholder's spouse, and natural or adoptive parents, children, and siblings own, control or have a beneficial interest in less than five percent of the outstanding shares in the corporation;

(ii) an individual shall be presumed not to be affiliated with others, solely for actions taken as an agent of another within the normal scope of duties of a court appointed guardian, a licensed attorney, real estate broker or salesperson, engineer or land surveyor, unless the compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship;

(iii) a seller or chartered lending institution shall be presumed not to be affiliated with others, solely for financing

all or a portion of the purchase price at rates not substantially higher than prevailing lending rates in the community, and subsequently granting a partial release of the security when the buyer partitions or divides the land.

(15) "Primary agricultural soils" means soils which have a potential for growing food and forage crops, are sufficiently well drained to allow sowing and harvesting with mechanized equipment, are well supplied with plant nutrients or highly responsive to the use of fertilizer, and have few limitations for cultivation or limitations which may be easily overcome. In order to qualify as primary agricultural soils, the average slope of the land containing such soils does not exceed 15 percent, and such land is of a size capable of supporting or contributing to an economic agricultural operation. If a tract of land includes other than primary agricultural soils, only the primary agricultural soils shall be affected by criteria relating specifically to such soils.

(16) "Rural growth areas" means lands which are not natural resources referred to in section 6086(a)(1)(A) through (F), section 6086(a)(8)(A) and section 6086(a)(9)(B), (C), (D), (E) and (K) of this title.

(17) "Shoreline" means the land adjacent to the waters of lakes, ponds, reservoirs and rivers. Shorelines shall include the land between the mean high water mark and the mean low water mark of such surface waters.

(18) "Stream" means a current of water which is above an elevation of 1,500 feet above sea level or which flows at any time at a rate of less than 1.5 cubic feet per second.

(19) "Subdivision" means a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is within five miles or within the jurisdictional area of the same district commission. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a qualified organization,

as defined under section 6301a of this title, if the land to be transferred includes and will preserve a segment of the Long Trail. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a "qualified holder" of "conservation rights and interest," as those terms are defined in section 821 of this title. Amended 1995, No. 10 (Adj. Sess.) § 1, eff. April 4, 1995.

(20) "Fissionable source material" means mineral ore which

(A) is extracted or processed with the intention of permitting the product to become or to be further processed into fuel for nuclear fission reactors or weapons; or

(B) contains uranium or thorium in concentrations which might reasonably be expected to permit economically profitable conversion or processing into fuel for nuclear reactors or weapons.

(21) "Reconnaissance" means:

(A) a geologic and mineral resource appraisal of a region by searching and analyzing published literature, aerial photography and geologic maps; or

(B) use of geophysical, geochemical, and remote sensing techniques that do not involve road building, land clearing, the use of explosives, or the introduction of chemicals to a land or water area; or

(C) surface geologic, topographic or other mapping and property surveying; or

(D) sample collections which do not involve excavation or drilling equipment, the use of explosives or the introduction of chemicals to the land or water area.

(22) "Farming" means:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding or management of livestock, poultry, equines, fish or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or

(F) the on-site production of fuel or power from agricultural products or wastes produced on the farm.

(23) "adjoining Property Owner" means a person who owns land in fee simple, if that land:

(A) shares a property boundary with a tract of land where a proposed or actual development or subdivision is located; or

(B) is adjacent to a tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream, or public highway.

(24) "Solid waste management district" means a solid waste management district formed pursuant to section 2202a and chapter 121 of Title 24, or by charter adopted by the general assembly.

(25) "Slate quarry" means a quarry pit or hole from which slate has been extracted or removed for the purpose of commercial production of building material, roofing, tile or other dimensional stone products. "Dimensional stone" refers to slate that is processed into regularly shaped blocks, according to specifications. The words "slate quarry" shall not include pits or holes from which slate is extracted primarily for purposes of crushed stone products, unless, as of June 1, 1970, slate had been extracted from those pits or holes primarily for those purposes.

--1969, No. 250 (Adj. Sess.), § 2, eff. April 4, 1970; Amended 1973, No. 85, § 8; 1979, No. 123 (Adj. Sess.), §§ 1-3, eff. April 14, 1980; 1981, No. 250 (Adj. Sess.), § 6, eff. April 28, 1982; 1983, No. 114 (Adj. Sess.), § 1; 1985, No. 64; 1987, No. 64, § 2; 1987, No. 273 (Adj. Sess.), § 2, eff. June 21, 1988; 1989, No. 154 (Adj. Sess.); No. 231 (Adj. Sess.), § 1, eff. July 1, 1991; No. 234 (Adj. Sess.), § 4. Amended 1993, Act No. 232 (Adj. Sess.), § 24, eff. March 15, 1995. Amended 1995, Act No. 30 (Adj. Sess.), § 1 eff. April 13, 1995.

§ 6001a. Public auctions

As used in this chapter "development" shall also mean the sale of any interest in a tract or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into five or more separate parcels of any size within a

radius of five miles of any point on any such parcel, and within any period of ten years, by public auction; and "public auction" means any auction advertised or publicized in any manner, or to which more than ten persons have been invited.--Added 1973, No. 256 (Adj. Sess.), eff. April 11, 1974. However, if the sales described under this section are of interests that, when sold by means other than public auction, are exempt from the provisions of this chapter under the provisions of subsection 6081(b) of this title, the fact that these interests are sold by means of a public action shall not, in itself, create a requirement for a permit under this chapter.--1991, No. 111, § 4, eff. July 1, 1991.

§ 6001b. Low-level radioactive waste disposal facility

Any low-level radioactive waste disposal facility proposed for construction under chapter 161 of this title shall be a development, for purposes of this chapter, independent of the acreage involved. Any construction of improvements which is likely to generate low-level radioactive waste is a development, for purposes of this chapter, independent of the acreage involved. The criteria and procedures for obtaining a permit shall be the same as for any other development.--Added 1989, No. 296 (Adj. Sess.), § 6, eff. June 29, 1990.

§ 6001c. Jurisdiction over broadcast and communication support structures and related improvements

In addition to other applicable law, any support structure proposed for construction, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes, shall be a development under this chapter, independent of the acreage involved. If jurisdiction is triggered for such a support structure, then jurisdiction will also extend to the construction of improvements ancillary to the support structure, including buildings, broadcast or communication equipment, foundation pads, cables, wires, antennas or hardware, and all means of ingress and

egress to the support structure. To the extent that future improvements are not ancillary to the support structure and do not involve an additional support structure, those improvements shall not be considered a development, unless they would be considered a development under this chapter in the absence of this section. The criteria and procedures for obtaining a permit under this section shall be the same as for any other development. -- Added 1997, No. 48, § 2, eff. July 1, 1997.

§ 6002. Procedures

The provisions of chapter 25 of Title 3 shall apply unless otherwise specifically stated.--1969, No. 250 (Adj. Sess.), § 26, eff. April 4, 1970.

§ 6003. Penalties

A violation of any provision of this chapter or the rules promulgated hereunder is punishable by a fine of not more than \$500.00 for each day of the violation or imprisonment for not more than two years, or both.--1969, No. 250 (Adj. Sess.), § 28, eff. April 4, 1970.

§ 6004. Repealed. 1989, No. 98 (Adj. Sess.)

§ 6005. Repealed. 1989, No. 98 (Adj. Sess.)

§ 6006. Repealed. 1989, No. 98 (Adj. Sess.)

§ 6007. Act 250 disclosure statement; jurisdictional determination

(a) Prior to the division or partition of land, the seller or other person dividing or partitioning the land shall prepare an "Act 250 Disclosure Statement." A person who is dividing or partitioning land, but is not selling it, shall file a copy of the statement with the town clerk, who shall record it in the land records. The seller who is dividing or partitioning land as part of the sale shall provide the buyer with the statement within 10 days of entering into a purchase and sale agreement for the sale or

exchange of land, or at the time of transfer of title, if no purchase and sale agreement was executed, and shall file a copy of the statement with the town clerk, who shall record it in the land records. Failure to provide the statement as required shall, at the buyer's option, render the purchase and sales agreement unenforceable. If the disclosure statement establishes that the transfer is or may be subject to 10 V.S.A. chapter 151, and that information had not been disclosed previously, then at the buyer's option the contract may be rendered unenforceable. The statement shall include the following, on forms determined jointly by the board and the commission of the department of taxes:

(1) the name and tax identification number of the seller's or divider or partitioner's spouse, and parents and children, natural or adoptive, and whether or not any of the individuals named will derive profit or consideration, or acquire any other beneficial interest from the partition or division of the land in question. However, this information will be required only to the extent that:

(A) the individuals in question have been seller or buyer of record with respect to the partition or division of other land within the previous five years, and

(B) that other land is located within five miles of any part of the land currently being divided or partitioned, or is located within the jurisdictional area of the same district environmental commission;

(2) the name and tax identification number of all individuals and entities affiliated with the seller or divider or partitioner for the purpose of deriving profit or consideration, or acquiring any other beneficial interest from the partition or division of the land, as that affiliation is conditioned and limited according to the definition of "person" in section 6001(14) of this title;

(3) a statement identifying any partition or division of land which has been completed:

(A) within the preceding five years;

(B) by any of the entities or individuals identified under subdivisions (a)(1) or (2) of this section as deriving profit or consideration or acquiring any other beneficial interest from the partition or division of the land;

(C) within five miles of any part of the land being divided or partitioned, or within the jurisdictional area of the district environmental commission in which the land is located; and

(4) notice that a permit may be required under this chapter. --1991, No. 111, § 7. (Note: effective October 1, 1991.)

(b) If, before the transfer of title, facts contained in the disclosure statement change, the seller shall provide the buyer with an amended statement in a timely manner.

(c) With respect to the partition or division of land, or with respect to an activity which might or might not constitute development, any person may submit to the district coordinator an "Act 250 Disclosure Statement" and other information required by the board, and may request a jurisdictional opinion from the district coordinator concerning the applicability of this chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the board, shall serve the opinion on individuals or entities who may be affected by the outcome of the opinion, and on parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist. A jurisdictional opinion of a district coordinator shall be subject to a request for reconsideration and may be appealed to the board by the applicant, by individuals or entities who may be affected by the outcome of the opinion, or by parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist. An appeal from a jurisdictional opinion of a district coordinator must be filed within 30 days of the mailing of the opinion to the person appealing. Failure to appeal within the prescribed period shall render the jurisdictional opinion the final determination with respect to jurisdiction under this chapter unless the opinion has not been properly served on parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist, and on persons and entities which may be affected by the outcome of the decision, according to rules of the board. Any appeal shall be by means of a petition for declaratory ruling and must be accompanied by a \$25.00 filing fee. Such petitions will be considered and

disposed of promptly. A petition shall be treated as a contested case. The chair may issue preliminary rulings subject to timely objection of any party in interest, in which event the matter shall be considered by the board. The board shall provide due notice of the filing of a petition for declaratory ruling to each party entitled to service pursuant to section 6084 of this title.--Added 1987, No. 64, § 3 and 1991, No. 111, § 3, eff. July 1, 1991. Amended 1993, No. 232 (Adj. Sess), §25, eff. March 15, 1995.

Legislative findings. 1987, No. 64, § 1, provides: "It is the finding of the general assembly that the state of Vermont is experiencing a significant increase in the number of land subdivisions which are made for speculative purposes; that some of these subdivisions are eroding the natural resource base upon which Vermont's agricultural, forestry, mineral and recreational industries depend; that some of these subdivisions have the potential of imposing significant financial burdens upon local communities providing municipal and educational services; that it is the policy of the state of Vermont to ensure that major subdivision activity within the state comply with the criteria of Vermont's Land Use and Development Law (Act 250), in order to protect the public health, safety and general welfare; and that in order to ensure appropriate Act 250 review, it is necessary to treat persons with an affiliation for profit, consideration, or some other beneficial interest derived from the partition or division of land as a single person for the purpose of determining whether a particular conveyance is subject to Act 250 jurisdiction."

Basis for determination of number of lots. 1987, No. 65, § 10, provided: "Any lot, all portions of which are greater than five miles apart, but any portion of which are within the jurisdictional area of a district commission, shall not be counted as a lot, solely on the basis of that distinction, if it was conveyed before the effective date of this act."

The provisions of the act affecting Title 10 became effective on July 1, 1987.